

## Small Business Administration

## § 134.508

(b) Except where inconsistent with this subpart, the provisions of Subpart A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by Subpart C of this part.

### § 134.502 Who may appeal?

Appeals from SDVO SBC protest determinations may be filed with OHA by the protested concern, the protester, or the contracting officer responsible for the procurement affected by the protest determination.

### § 134.503 When must a person file an appeal from an SDVO SBC protest determination?

Appeals from an SDVO SBC protest determination must be commenced by filing and serving an appeal petition within 10 business days after the appellant receives the SDVO SBC protest determination (*see* § 134.204 for filing and service requirements). An untimely appeal will be dismissed.

### § 134.504 [Reserved]

### § 134.505 What are the requirements for an appeal petition?

(a) *Format.* There is no required format for an appeal petition. However, it must include the following information:

(1) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(2) A statement that the petition is appealing an SDVO SBC protest determination issued by the D/GC, a copy of the protest determination being appealed, and the date the petitioner received the SDVO SBC protest determination;

(3) A full and specific statement as to why the SDVO SBC protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation; and

(4) The name, address, telephone number, facsimile number, e-mail address, and signature of the appellant or its attorney.

(b) *Service of appeal.* The appellant must serve the appeal petition upon each of the following:

(1) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205-6390;

(2) The contracting officer responsible for the procurement affected by an SDVO SBC determination;

(3) The protested concern (the business concern whose SDVO SBC status is at issue) or the protester; and

(4) Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile (202) 205-6873, or e-mail at [OPLService@sba.gov](mailto:OPLService@sba.gov).

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

[70 FR 8927, Feb. 24, 2005, as amended at 75 FR 47443, Aug. 6, 2010]

### § 134.506 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

### § 134.507 When does the D/GC transmit the protest file and to whom?

Upon receipt of an appeal petition, the D/GC will send to OHA a copy of the protest file relating to that determination. The D/GC will certify and authenticate that the protest file, to the best of his or her knowledge, is a true and correct copy of the protest file.

### § 134.508 What is the standard of review?

The standard of review for an appeal of a SDVO SBC protest determination is whether the D/GC's determination was based on clear error of fact or law. With respect to status determinations on whether the owner is a veteran, service-disabled veteran, or veteran with a permanent and severe disability,

## **§ 134.509**

the Judge will not review the determinations made by the U.S. Department of Veteran's Affairs, U.S. Department of Defense, or such determinations identified by documents provided by the U.S. National Archives and Records Administration.

### **§ 134.509 When will a Judge dismiss an appeal?**

(a) The Judge selected to preside over a protest appeal shall dismiss the appeal, if:

(1) The appeal does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination;

(2) The appeal petition does not contain all of the information required in § 134.505;

(3) The appeal is untimely filed pursuant to § 134.503 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in Subparts A and B of this part; or

(4) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once Appellant files an appeal, subsequent initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

### **§ 134.510 Who can file a response to an appeal petition and when must such a response be filed?**

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within 7 business days after service of the appeal petition. The response should present argument.

### **§ 134.511 Will the Judge permit discovery and oral hearings?**

Discovery will not be permitted and oral hearings will not be held.

### **§ 134.512 What are the limitations on new evidence?**

The Judge may not admit evidence beyond the written protest file nor per-

## **13 CFR Ch. I (1–1–12 Edition)**

mit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

### **§ 134.513 When is the record closed?**

The record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.510.

### **§ 134.514 When must the Judge issue his or her decision?**

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record.

[70 FR 8927, Feb. 24, 2005, as amended at 76 FR 5685, Feb. 2, 2011]

### **§ 134.515 What are the effects of the Judge's decision?**

(a) A decision of the Judge under this subpart is the final agency decision and is binding on the parties. For the effects of the decision on the contract or procurement at issue, please see 13 CFR 125.28.

(b) The Judge may reconsider an appeal decision within twenty (20) calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after issuance of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(c) The Judge may remand a proceeding to the D/GC for a new SDVO SBC determination if the latter fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new SDVO SBC determination.

[70 FR 8927, Feb. 24, 2005, as amended at 73 FR 56955, Oct. 1, 2008; 75 FR 62292, Oct. 7, 2010; 76 FR 5685, Feb. 2, 2011]